

**MINUTES OF THE REGULAR MEETING  
ZONING BOARD OF APPEALS  
TOWN OF NEW HARTFORD MUNICIPAL BUILDING  
MAY 22, 2023**

The Regular Meeting was called to order by Chairman Randy Bogar at 6:00 P.M. Board Members present Byron Elias, Fred Kiehm, Karen Stanislaus, Lenora Murad, and Daniel McNamara. Board Member absent: Michele Mandia. Also in attendance were Town Attorney Herbert Cully, Councilmen David Reynolds, Richard Lenart, Highway Superintendent Richard Sherman, Codes Officer George Farley, and Secretary Dory Shaw. Everyone in attendance recited the Pledge of Allegiance. Chairman Bogar introduced the Board Members and explained the procedures for tonight's meeting, in particular that we are absent one Board Member and it is up to the applicant whether to proceed.

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The application of **Mr. Daniel Tauroney for Acme Pool & Spa, 4502 Commercial Drive, New Hartford, New York**, to renovate the front of the building with new windows, doors, siding and covered front entry. The required front setback distance is 30 feet. The proposed covered front entry is approximately 12' +/- from the front property line. Applicant is seeking a quantity Area Variance of approximately 19' +/- . Tax Map #328.008-1-9; Zoning: C1 General Commercial. Mr. Tauroney did not appear. A letter will be going out to Mr. Tauroney to appear at the May 22, 2023 Zoning Board meeting. Mr. Tauroney appeared before the Board.

Mr. Tauroney explained that he wanted to update the front of this commercial business and he wanted to cover the step area. Here will be two pillars and an automatic door. He is improving the handicap entrance.

Chairman Bogar asked if there was anyone present to address this application – no response. The Public Hearing ended at approximately 6:10 P.M.

NYSDOT and Oneida County Planning had no issues with this request.

At this time, the Board Members reviewed the criteria for an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in agreement
- The requested variance is substantial – response: no, all in agreement;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion was made by Board Member Fred Kiehm to **approve** the application of Mr. Tauroney; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Lenora Murad. Vote taken:

Chairman Randy Bogar - yes  
Board Member Fred Kiehm - yes  
Board Member Lenora Murad - yes

Board Member Byron Elias - yes  
Board Member Karen Stanislaus - yes  
Board Member Dan McNamara – yes

**Motion approved.** The Board thought this was an improvement to the property.

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The application of **Mr. Michael Ambrose, 13 Benton Circle, Utica, New York (Town of New Hartford)**. Mr. Ambrose is proposing to replace the existing garage with an attached 24' x 32'± garage. The proposed new structure will end up being 3' 6"± off the left property line. This will encroach into the side yard setback on each side by 11'6"± into the side. The applicant is seeking an Area Variance of 11'6"± into the side yard setback. Mr. and Mrs. Ambrose appeared before the Board.

Mr. Ambrose explained that he needs the additional space for a garage. He wants to add a second stall with the same siding; he will have a 126' door. He displayed a picture of the siding now and what it will look like – he'll have culture stone. The existing garage now is too close and that is why he needs the variance. He is going closer to the house. The alley way will be gone.

Chairman Bogar asked if there was anyone present to address this application:

-Ms. Celeste Billins, 11 Benton Circle: she is the one most affected by this request but she supports what the Ambrose's are proposing.

The Public Hearing closed at approximately 6:20 P.M.

At this time, the Board Members reviewed the criteria for an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no, all in agreement;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance - response: no, all in agreement;
- The requested variance is substantial – response: no, all in agreement
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in agreement;
- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: no, all in agreement.

Motion was made by Board Member Dan McNamara to approve the application submitted by Mr. Ambrose; and that a Building Permit be obtained within one year of approval date; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar - yes  
Board Member Fred Kiehm - yes  
Board Member Lenora Murad - yes

Board Member Byron Elias - yes  
Board Member Karen Stanislaus - yes  
Board Member Dan McNamara – yes

**Motion approved.**

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The new variance application of **Mr. Harold Martin, 1 Claridge Court, New Hartford, New York.** The applicant has proposed to extend a 4 foot tall chain link fence from the end of the privacy along southern edge of the property up to 17± to the edge of the street. This will be 1± foot off the front property line. The proposed fence will extend along the street and return 5± feet off the driveway to the front of the home. Therefore, the applicant is seeking an Area Variance for a 4± foot tall chain link fence into the front yard area setback. The proposed fence will be 17± feet off the edge of the street and 1± foot off the front property line. Mr. and Mrs. (Tangorra) Martin appeared before the Board.

Mrs. Martin explained to the Board that they took into consideration the comments from the last which (at which time their application for a fence did not pass). They modified the plans – they would like a 4’ white picket style fence (they submitted a photo of the type of fence they would like to have placed on this property). She explained the history of them purchasing the property which they rent and the request for privacy at this location as well as safety and that is why they are requesting to place a fence at this location. They submitted a list of residents in this area who support their application, as well as locations throughout the Town of people who have fences in the front of their properties. For her occupants, a fence provides safety and they will make the fence attractive. This home doesn’t have any back yard and this fence will provide privacy and safety for the children/residents who live there. They looked at shrubs but it’s not appealing to them.

Board Member Elias explained that some of the fences she referred to were either not owned by the resident or fences erected before the change in the Code. Town Attorney Cully explained they this Board deals with applications on its merits and legal precedence and the Codes Officer has to decide what the law allows.

Chairman Bogar asked if there was anyone present to address this application – no response. The list of residents who supported this application have been made a part of the file. The Public Hearing closed at approximately 6:40 P.M.

At this time, the Board Members reviewed the criteria for an Area Variance:

- An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance – response: no, all in favor;
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance – response: no, all in favor;
- The requested variance is substantial – response: no, all in favor;
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district – response: no, all in favor;

- The alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude granting the variance – response: yes, all in favor.

Motion was made to grant the variance request for a 4' white picket fence by Board Member Byron Elias; seconded by Board Member Karen Stanislaus; and that a Building Permit be obtained within one year of approval date. Vote taken:

Chairman Randy Bogar - yes  
Board Member Fred Kiehm - yes  
Board Member Lenora Murad - yes

Board Member Byron Elias - yes  
Board Member Karen Stanislaus - yes  
Board Member Dan McNamara – yes

**Motion approved.**

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The new area variance application for **Ms. Judy DeFina, 201 Gilbert Road, New Hartford, New York.** The new application of Ms. Judy DeFina, 201 Gilbert Road, New Hartford, New York. Ms. DeFina is seeking Area Variances for an inground pool and fence on her property on the corner of Gilbert Road and Woodstream Court. Corner lots have two front yards and, thus, she will need the following Area Variances. Tax Map #339.001-1-6; Zoning: Low Density Residential. Ms. DeFina and Michael Arcuri, Esq. appeared before the Board. Attorney Arcuri said he would proceed with this application even though one Board Member isn't present.

- 1) Pursuant to Section 118-23C (1) No accessory structures shall be located in the front yard. The applicant is seeking Area Variances to construct a swimming pool and fence in the front yard on Woodstream Court. The pool will extend approximately 45' to 55'± in front of the residence, thus, requiring a 45'- 55'± front yard variance.
- 2) Pursuant to Section 118-80D Residential fences shall not extend forward beyond the frontmost point of a residential building. Pursuant to Section 118-23(C)(2), a swimming pool shall be set back a minimum of 10' from all side and rear lot lines. The applicant is seeking Area Variances to construct the fence around her pool extending approximately 60' to 70'± into her front yard and extending to and connecting with a neighbor's fence located on the property line. Applicant will need a front yard variance of 60' to 70'± to place the fence in her front yard and a 10' side yard variance to allow the fence to connect to the neighbor's fence.

Attorney Arcuri explained the changes and resubmittal of this application. The footprint is behind the front porch if the neighbor's home – they won't see the pool. He said the neighbor supports the application. He referred to the water issue brought up by the Town and they had a report done by Mr. John Dillon, Civil Engineer, who addressed the water issue concern, in part stating that he didn't anticipate any detriment to the local drainage by placement of this proposed pool. They do not feel this project creates a water issue. Attorney Arcuri referred to a possible Article 78 action. He went through

the criteria which the Zoning Board members consider and his opinion as to why he feels this variance should be granted.

Discussion ensued regarding what the members and staff wanted in relation to an engineering report. They felt the letter submitted by Mr. Dillon didn't specifically address what they are looking for on this project. Discussion further took place regarding how the Board voted, 3-3, on this project.

Attorney Arcuri said the applicant changed the application and he feels they have addressed the Board's concerns.

Chairman Bogar asked if there was anyone present to address this application:

-Mr. Patrick Cardinale, 4 Woodstock Court. He addressed the Board with a list of his comments and concerns. This 4-page submittal will be attached to the minutes. He is not in favor of this application. It is not a personal issue, but he feels this pool does not belong at this location for the reasons of aesthetics, drainage, water and that the lot is not large enough. He feels the letter from Mr. Dillon is not what this Board had requested.

-Mr. Richard Sherman, Town of New Hartford Highway Superintendent: we had asked for an engineering report and all he saw is a letter from Mr. Dillon. He respects Mr. Dillon but he did not address the issues and what was requested, i.e., soil samples, runoff, etc. Something from him that could be reviewed by our contract Town Engineer. He does not feel what Mr. Dillon submitted is what our contract engineer would need to review as he just submitted a letter.

Attorney Arcuri stated he felt this Board did not ask for a specific engineering report; he feels they produced what this Board requested. Nothing says that something in the report is incorrect.

Mr. Cardinale didn't say it was flawed – it is incomplete. He feels this is not an engineering report, i.e. soil samples, runoff, etc. He referred to the Zoning Board minutes of March 6, 2023 which addressed a report.

Chairman Bogar asked Mr. Sherman to address what he is looking for with regard to an engineering report: a report to show our contract Town Engineer with regard to runoff, soil, etc. A detailed report for this area. Chairman Bogar feels an engineering report that goes into more depth for this area is needed. He also referred to what was mentioned previously regarding a dry well and he didn't see this in his letter.

Attorney Arcuri stated Mr. Sherman isn't a Board Member and he feels this isn't part of the criteria to produce a report.

-Mrs. Gilbert, Woodstock Court. She remembers Mr. Sherman mentioning the specific water issues, soil samples, runoff, etc.

-Ms. Christa Nigro, 17 Rollingwood Drive. She has stated previously that she is against this request for Ms. DeFina. This pool, in her opinion, would be an eyesore and water is a huge concern. She feels the residents have a right to speak.

-Mr. John Gilbert, Woodstock Court. He feels it will distract from the neighborhood.

Discussion ensued regarding what is expected in an engineering report and how another applicant had to do further research on that application on Higby Road. Also, Board Member Elias brought up a discussion of an addition to this house and tried to relate it to what would be required. Codes Officer George Farley said this is a corner lot and he addressed what would be required – house addition vs. pool. Codes would require the contractor to have an architect's report, stamped drawings, etc. Also, a drainage report may or may not be required.

It was discussed that this application be put on hold again until a detailed engineering report is received and reviewed by our Highway Superintendent and contract Town Engineer. Ms. Nigro addressed the Board stating that people have come several times for this same issue. Also, can people be guaranteed a full Zoning Board attendance – Chairman Bogar said he can't guarantee this, Town Attorney Cully said the Board may want to table this for more information. There is no definition on the number of hearings. It is up to the Board to decide if they have enough information to review an application. There is no set rule. It is our position that everyone should have an opportunity to be heard.

Mr. Cardinale referred to number of 4 of the required criteria and asked how the Board felt about it. Board Member Elias explained how the criteria is addressed.

Board Member McNamara stated for the record that an engineering report isn't going to change his opinion on this application. He doesn't want to see time and money spent for a report. He gave his opinion of why he doesn't want to see this pool at this location – it is a front yard.

The Board Members were polled regarding seeking a detailed engineering report. It was the consensus of most of the Board Members that a full engineering report should be done. However, the Board will review every aspect of this application, not only an engineering report.

Town Attorney Cully would like more information before they determine how they are going to vote. It helps with additional information. The engineering report will not be the only criteria how this Board will vote on this project. It is part of our decision making process.

Motion was made by Board Member Byron Elias that the applicant provide a detailed engineering report and that this application be tabled subject to the receipt of this engineering report acceptable to the Town of New Hartford Highway Superintendent and contract Town Engineer; seconded by Board Member Karen Stanislaus. Vote taken:

Chairman Randy Bogar – yes

Board Member Karen Stanislaus – yes

Board Member Fred Kiehm – yes

Board Member Byron Elias – yes

Board Member Lenora Murad – yes

Board Member Dan McNamara – no

Motion passed to table this application by a vote of 5 – 1.

Mr. Cardinale asked about the selection of an engineer as he is concerned about someone being a friend as stated in the letter submitted by Mr. Dillon. It is up to the applicant who to choose but that is why it will be reviewed in detail with the Highway Superintendent and the Town's contract engineer. Also, Board Member Elias stated the report will be by a person this Board feels is acceptable.

Mr. Harry Young, Woodstock Court referred to an engineering report with charts and tables and signed with an engineer's stamp.

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Motion was made by Board Member Byron Elias to approve the minutes of the April 17, 2023 Zoning Board meeting; seconded by Chairman Randy Bogar. All in favor.

There being no further business, the meeting adjourned at approximately 7:55 P.M.

Respectfully submitted,

Dolores Shaw, Secretary  
Zoning Board of Appeals

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